

Magdalen Cochran, otherwise Campbell, Widow and Administratrix } Appellant.
of Captain John Campbell of Carrick, deceased, - - -

Mrs. Jean Campbell - - - - - Respondent.

The Appellant's C A S E.

THE said John Campbell very early made his Addresses to the Appellant, when they were both very young; but his Estate being incumbered his Friends sent him to Sea to improve his Fortune, which put an End to the Courtship, and the Appellant was married to Mr. Kennedy, a Son of Sir Archibald Kennedy of Culzean, Baronet, who soon afterwards died; and the Appellant being a Widow, and Mr. Campbell being returned from Sea, he, in the Year 1724, renewed his Addresses to the Appellant, who then had a House in the Town of Paisley, for herself and her Children, but lived for the most Part in the Abbey of Paisley with her Cousins the Countesses of Strathmore and Gallaway, who were then young Ladies, and who lived in that House with their Brother the Earl of Dundonald.

Married 3d July 1724.

Certificate, 3d July 1724.

In Summer 1724 the Appellant went with these Ladies, her Relations, into Argyleshire, and Mr. Campbell went along with them, and returned with them to the Abbey of Paisley, and Mr. Campbell and the Appellant agreed to intermarry; but as Mr. Campbell had made no Addition to his Fortune, by going to Sea, he was apprehensive his Marriage with the Appellant, who was a Widow, and had a Family of Children, and but 600 l. of her own, would not be agreeable to his Relations; particularly his Uncle Sir James Campbell of Ardkinglass, who was a great Creditor upon his Estate, and who was the chief Director of his Affairs: For this Reason he proposed the Marriage should be kept private for some little Time, that he might have an Opportunity to soften his Relations, upon whom he had so great a Dependence; to which the Appellant consented, as her marrying Mr. Campbell might also disoblige her Relations; and accordingly Mr. Campbell and the Appellant were married in the said Abbey of Paisley, the Seat of her Grandfather, the Earl of Dundonald, on the 3d July 1724, by Mr. William Cockburne, an Episcopal Minister, in the Presence of William and Archibald McIntyre, then Servants to Mr. Campbell; but as Episcopal Ministers are not allowed, by the Law of Scotland, to perform these Ceremonies, Mr. Cockburne refused to give a Certificate of the Marriage, for Fear of being convicted and punished by that Law, and told the Appellant he never gave any; but said that Mr. Campbell's own Certificate would do as well; whereupon Mr. Campbell himself, immediately upon the Marriage, gave her a holograph Certificate in the following Terms: "At Paisley the Third of July 1724, this Day, I John Campbell of Carrick, do hereby certify and declare, that I was solemnly and lawfully married to Mrs. Magdalen Cochran, lawful Daughter to Alexander Cochran of Bonshaw, Esq; now my dear Wife, as witness my Hand, Place, and Date foresaid, John Campbell."

From this Period Mr. Campbell and the Appellant behaved and treated each other as Husband and Wife, so far as it was consistent with his Plan of Secrecy; but, notwithstanding all their Caution, the Secret of their Marriage transpired, and it came to be reported and believed at Paisley, and in the Neighbourhood round the Country, that Mr. Campbell and the Appellant were married, and that Mr. Cockburne had performed the Ceremony.

Letter, 4th Nov. 1725.

Soon after this Mr. Campbell, by the Interest of his Relations, got a Commission to raise an independant Highland Company, which proved a Hindrance to his setting up a Family, and taking home the Appellant, his Wife, for some Time, left it might give Umbrage to his Relations who had been so kind to him; and the Appellant having removed from Paisley, upon the Death of the Earl of Dundonald, she took a House in Edinburgh, where Mr. Campbell lived with the Appellant, as her Husband, as often as he could, or the Attendance upon his Company allowed him, and being apprehensive the Appellant was uneasy that their Marriage was not published, Mr. Campbell wrote her the following Letter. "My dear Maudie, I am just now in a very great Hurry, and I beg you'll not be uneasy, and in a few Days I design myself the Pleasure of seeing you, in order to declare publicly our Marriage. I hope it will be to the Satisfaction of us both. Sure I am it will be to my dear Maudie's most affectionate Husband and Slave, John Campbell. Camfai, 4th November 1725. To Mrs. Kennedy, at her House in the Canongate, Edinburgh." Thus when Mr. Campbell and the Appellant were at a Distance they corresponded as Husband and Wife, without any Interruption of their mutual Happiness till March 1726, when the Appellant, to her great Surprise and Astonishment, received the following Letter from her Husband.

Letter 1st March 1726.

"My dearest Life, allow me still to call you so, the Contents of this Letter will certainly astonish and confound you. Unable as I am, either to write or act as I ought to do, with regard to any thing, I must acquaint you with the most melancholy and terrible Misfortune that ever happened to Man, who had nothing in View but to be happy, in doing all the Duties of a respectful, and most affectionate Husband, to the best and most dearly beloved of Women; but alas! how have I deprived myself of that Happiness! How justly have I forfeited that honest and sincere Love I might have expected from you, my Wife, my Friend, and only Joy in Life, and to which, from our mutual Engagements and Marriage, I had a real Title! Miserable Soul that I am! I have lost all Hopes of Comfort, by the Snares of a silly, worthless, and self-designing Woman, whose repeated Advances I always shunned as I would have done the Devil, and to whom I never gave the least Encouragement, and far less Promises; yea never thought of her; yet, alas! how shall I be able to express it! Notwithstanding of the undoubted, just, and only Title you have had, and always must have to me, as your Husband, and whatever else can be called mine, which you can, when you please, make appear, and at all times claim me as such, I have, without giving my self Time to think seriously, thro' Fear of disobliging the Duke of Argyle, and his Friends, plunged myself into the utmost Misery. You'll by this time guess what I mean. Alas! what shall I say to my dearest Maudie! though my Hands are guilty my Heart is free. Oh! how shall I mention that fatal Night, which has been the Cause of all my Woe, when having drunk to a very great Pitch, and sitting alone in the Fields, that deceitful Woman, or rather Devil, whom the World now calls my W—e, and who, on every Occasion, laid Traps to ensnare me, designedly threw herself in my Way: How shall I tell you what followed, my Spirits fail me; I sink, I can no more—Ruin and Destruction to me by her insinuating Insinuations, and cursed lewd Behaviour, and my not being Master of myself, I did.—O! how shall I name it! she fell with Child, which was all the Devil wanted, joined with her vicious Inclinations, to bring about her own Ends, and in Horror and Confusion of Mind, for the Reason above, and to prevent my flying the Country (Reasons too slight, nay not to be named when seriously thought on) have put myself in the damnable Situation I am now in. Alas! why did I yield to the Fears of disobliging the Duke of Argyle, or any bad Treatment I might have met with from my Uncle, by declaring our Marriage to the World at the time it happened? Why did my dearest Wife join with me in being silent in an Affair upon which our sole Happiness in Life depended? Why nothing but her tender Regard to her Husband; and which, tho' I have no Reason to expect it, must be the only Cause I don't meet with her just Vengeance, which I not only deserve, but the Curse of God, unless by sincere Repentance, he forgive me. Alas! what shall I do? May I who, from my distressed Soul, on my Knees beg Forgiveness, expect it from injured Innocence, in Imitation of his Goodness. Tho' you have a Soul noble and generous, I on no other Account deserve it; but alas, pity me who am ruined by the Snares of a damnable deceitful little Wretch, and who has brought me under the Guilt of the most inexpressible Piece of Unjustice to the best and most deserving Wife; yet I must unalterably be yours: I was so I am so, to the last Moment of my Life. Therefore, O dearest and most injured of Women, let me, from a broken Heart, and sincere Repentance, beg and conjure you to give a cure to my wretched Soul, by allowing me to see you, that I may more fully explain the miserable State I am in: Grant me this Favour, that on my Knees, and with a Heart full of Sorrow and Contrition, I may ask Forgiveness. O forgive, if possible, your greatly distressed and most unhappy Husband John Campbell, March 1st 1726. To Mrs. Campbell of Carrick, at her House at Edinburgh."

It is easier to imagine than express the Appellant's Distress on this Occasion; nor is it material to the present Purpose to attempt to describe it. The Law of God, and the Civil Law of the Land, gave her a Right to claim her Husband; and she had sufficient Vouchers in her Hands to make good her Claim against her Husband and the Respondent. She was intitled also, to have obtained a Divorce against her Husband, upon his Infidelity and Breach of his Marriage Vows; but the Appellant loved her Husband, and had Reason to believe he loved her; and on that Account was disposed to forgive the Injury past, and admit of his Excuses, as it appeared to her he had no premeditated Share in the Injury, but that the Respondent herself was the Aggressor, and took the Advantage of him in his Liquor; and, at the same time, as she was over-persuaded, that making a judicial Claim, in her Husband's then Circumstances, might be attended with fatal Consequences to his Employment in the Army, and his future Preferment, the only Prospect of Subsistence for himself for his Family, she was induced to delay making her Claim, until such time as she expected it might be attended with less Danger to her Husband. Upon this Footing the Appellant received her Husband in May 1726, upon Promises of future Fidelity; and when his Affairs, and the Attendance upon his Company, required him to be absent from the Appellant, he endeavoured, by a con-

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tinual Correspondence by Letters, to make repeated Professions of sincere Love, Honour, and Regard, as from a Husband to a Wife; and they both, from time to time, communicated their Marriage to several of their Friends, in whom they could confide; but it was the Appellant's Misfortune, that her Husband's Apprehensions from the Respondent's Relations, continued longer than either he or the Appellant did at first imagine, his paternal Estate became more and more incumbered, and at last was absolutely sold, for Payment of the Debts affecting the same: His Rank in the Army continued the same, till he was killed at the Battle of Fontenoy, whereby he was prevented from doing the Appellant that Justice that he always promised her, and which, she has Reason to believe, he intended to have done voluntarily, by publicly declaring her his lawful Wife; the Prospect of which made the Appellant delay making her Claim in a judicial Way.

Upon the Death of Mr. Campbell the Appellant applied to the Prerogative Court of Canterbury, for Administration, as his Widow, which was granted to her the 28th of May 1745; and soon after applied to the War-Office, to be put upon the Establishment for Support of Officers Widows, and produced her Administration; notwithstanding which, the Agent for the Regiment, after he had seen the Administration, and made an Entry of it in his Book, signed a Certificate for the Respondent; upon which a Question arose concerning the Pension, and it was notified to the Respondent, to contest the Administration with the Appellant; but she declined it, and brought an Action Declarator of her Marriage before the Commissaries of Edinburgh, libelling that she was married to Mr. Campbell on the 9th December 1725, and made the Appellant a Party.

Soon after, and before the Respondent brought any Proof upon her Libel, the Appellant raised a Process in the said Commissary-Court, for declaring her Marriage, libelling, that she was married to Mr. Campbell on the 3d of July, 1724; and having made the Respondent a Party, she appeared, and gave in Defences; and in the Interim, that the Respondent was opposing the Appellant's being allowed to prove her Marriage; the Respondent led the Proof upon her own Libel *ex parte*.

Interlocutor 23d June 1747. The Commissaries upon the 23d of June, 1747. pronounced the following Interlocutor in the Appellant's Process, viz. The "Commissaries having considered the libelled Summons, and Declarator of Marriage, at the Instance of the Appellant, with the Writs therewith produced, Defences for the Respondent thereagainst Answers, thereto, Replies and Duplies, have before Answer allowed Mrs. Magdalen Cochran (the Appellant) a Proof of her Libel, and of all Facts and Circumstances tending to infer the Marriage libelled and grant Diligence accordingly."

7th of July, 1747. The Respondent presented a Bill of Advocacy; to the Court of Session in Scotland, complaining of this Interlocutor, which was refused by Lord Arncliffe, then Lord Ordinary; whereupon the Respondent exhibited a reclaiming Petition, and on the 7th of July, 1747. "The Lords ordained the same to be seen and answered, and that in the Answer the Appellant should particularly condescend on the Facts, by which her Claim was to be maintained, and of the Witnesses, by whom these Facts were to be proven." The Appellant complied with this Ordinance, and put in an Answer, and gave in a List of her Witnesses, and of the Facts she proposed to prove; the Court of Session, upon advising this Petition, with the Appellant's Answer "they remitted to the Lord Ordinary to

Interlocutor 28th July, 1747. "remit the Bill of Advocacy to the Commissaries, with this Instruction, to find that Mrs. Kennedy (meaning the Appellant) was barred *personal Exceptione*, from being admitted to prove that she was married to Mr. Campbell of Carrick, before he was married to the

Remit, 29th July, 1747. "Petitioner Mrs. Jean Campbell, the now Respondent"; and the Lord Ordinary by his Deliverance, "remitted to the Commissaries, with this Instruction, to find that Mrs. Kennedy (meaning the Appellant) was barred *Personal Exceptione*, from being admitted to prove that she was married to Mr. Campbell of Carrick, before he was married to the Petitioner Mrs. Jean Campbell."

Interlocutor 5th of August, 1747. The Commissaries, pursuant to this Remit, "found, that Mrs. Kennedy (meaning the Appellant) was barred *Personal Exceptione*, from being admitted to prove that she was married to Mr. Campbell of Carrick, before he was married to Mrs. Jean Campbell," and

Interlocutor 6th of August, 1747. the Commissaries, by their other Interlocutor of this Date, "found the Facts, Circumstances, and Qualifications, as proven by the Writs and Documents, produced for, and Depositions of the Witnesses, led in Behalf of the said Mrs. Jean Campbell relevant to infer Marriage; and found that the said deceased Captain John Campbell of Carrick, and the said Jean Campbell were Husband and Wife; and therefore found and declared, in Behalf of the said Mrs. Jean Campbell, conform to the Conclusion of her Libel, and found that the Appellant was barred *Personal Exceptione*, from being admitted to prove, that she was married to the said Captain John Campbell, before his Marriage with the said Mrs. Jean Campbell; and therefore dismissed the Process of Declarator at her Instance; and assolzie the said Mrs. Jean Campbell, simpliciter therefrom, and decern accordingly."

The Appellant, conceiving herself aggrieved by these Interlocutors, applied to your Lordships for Relief; praying that the same might be reversed, and that the said Interlocutor of the Commissaries of the 23d of June, 1747, which allowed the Appellant to prove her Marriage, might be affirmed; and the Respondent having appeared, the Cause came on to be heard on the 6th of February, 1748; and your Lordships were pleased to reverse the said several Interlocutors complained of, and to affirm the said Interlocutor of the Commissaries.

Pursuant to this Judgment of your Lordships, the Appellant proceeded in her Cause before the Commissaries, and was allowed to prove her Libel, and all Facts and Circumstances, tending to infer her Marriage; and the Appellant brought a Proof accordingly: And besides the Certificate, which is a Proof of an actual Marriage, and 128 Letters, including those two already stated from Mr. Campbell to her, all wrote as from a Husband to a Wife; she has shewn, by a great Number of Witnesses, a publick Courtship, by Mr. Campbell, previous to their Marriage; a general current Report in the Town of Paisley, and round the Country, of their Marriage, when it was celebrated; and of Mr. Cockburn's being at Paisley at that Time; and that he performed the Ceremony, and that the Respondent knew it; recent Declarations made by Mr. Campbell, that he was married to the Appellant on July the 3d, 1724, in the Abbey of Paisley, by Mr. Cockburn; that his two Servants Archibald and William Macintyre were present: and this both previous and subsequent to his Intercourse with the Respondent; that the Appellant recently after her Marriage, and long before this Intercourse with the Respondent, said, she was married to Mr. Campbell, and shewed her Certificate of her Marriage; that she from time to time told it to several Persons of Rank and Fortune; that Mr. Campbell and the Appellant lived and cohabited together, at Bed and Board, as Man and Wife, from the Time of their Marriage in 1724, at Paisley, Edinburgh and Ostend in Flanders, and other Places, down to the Year 1744, for three, four, and five Months at a Time; that the Respondent and her Friends knew it; that the Appellant in 1727 or 1728, had refused a very advantageous Match that was proposed to her, by a Gentleman of a good Estate and Fortune, much superior to Mr. Campbell's. That the Appellant frequently upbraided Mr. Campbell, for suffering the Respondent to be at his House in the Country; that he declared he could not help it, on account of his Dependence; that when the Appellant was for disclosing her Marriage, Mr. Campbell used to fall into passions, and say he would leave the Country; and frequently applied to Friends to whom they had communicated their Marriage, to intercede with the Appellant for him; and that his Life was miserable by being obliged to live with the Respondent, on Account of her Friends.

On the other Hand, the Respondent hath brought no Proof at all of a Celebration, nor any Proof whatever, but her living at Mr. Campbell's House in the Highlands, and being owned as his Wife; she has exhibited a pretended Certificate of her Marriage, dated the 9th December, 1725, which is not supported by any Proof at all, though attempted, and which has all the Appearance of being fictitious. This Certificate which is pretended to be made, and signed by a Clergyman of the Church of England, has no less than six orthographical Errors in it; and what is very extraordinary, it is pretended to be attested by the same Persons, Mr. Campbell's two Servants who were present at the Appellant's Marriage, not by their own Names of Archibald and William Macintyre, (which they always went by, and bore upon the Muster-Roll of Captain Campbell's Company, in 1725, proved in the Cause) but by the Names of Archibald and William Wright.

The pretended Subscription of these two Witnesses, is wrote in a Clerk-like Hand, and seem to be one Hand-writing; and to account for this changing of Names, the Respondent has attempted to prove that Macintyre translated from the Highland Language, signifies Wright; and that these People went by the names of Macintyre in the Highlands, and Wright in the Low-Country; but one of the Respondent's witnesses swears, that William who was a Merchant at Greenock, which is in the Low-Country, accepted a Bill to him, by the Name of William Macintyre." This Fact contradicts the Assertion, that these two Persons went by the Names of Wright in the Low-Country; and proves that the Subscription William Wright to the Respondents pretended Certificate is not genuine, especially as another Witness of the Respondent's, to whom this pretended Certificate was produced to prove the Subscription William Wright, "swears he cannot be positive, whether it is, or is not William's Subscription" nor does he take upon him to say he believes it; and as to the other Witness Archibald, he could not write his own Name; and before he died, declared he had heard the Respondent had juggled up Marriage-Lines, but he took God to witness he was clear of it.

But notwithstanding the clear and evident Proof of the Appellant's previous Marriage above stated, the Commissaries were pleased to pronounce the following Interlocutor.

29th of January, 1751. "The Commissaries having considered the Pursuer Mrs. Magdalen Cochran, her Libel, with the Depositions of the Witnesses adduced by her, together with the Certificate, and other written Documents, given in for proving her Marriage; and having also considered the Documents produced for Mrs. Jean Campbell, for proving her Marriage, with the Depositions of the Witnesses likewise adduced in her Declaration of Marriage and Legitimacy, which are repeated in this Process, and particularly the Proof of Carrick, and her overt Cohabitation as Husband and Wife, from the Beginning of the Year 1726, until the Year 1743, when he went Abroad with the Highland Regiment, they find that the said Mrs. Magdalen Cochran hath not proved her prior Marriage libelled



“ libelled ; and therefore dismiss her Process, and affoizle the Defenders ; and find the Facts, Circumstances and Qualifications as
 “ proven for Mrs. *Jean Campbell*, relevant to infer Marriage ; and find that the deceased Captain *John Campbell* of *Carrick*, and
 “ she, were Husband and Wife ; and that Miss *Jean Campbell* procreate betwixt them is their lawful Daughter ; and decern
 “ accordingly.”

The Appellant immediately presented a very short Bill of Advocation to the Lords of Session in *Scotland* ; complaining of this Interlocutor ; to which the Respondent put in a very long Answer, the Sum of which was attempting to discredit some Part of the Appellant's Proof, and still insisting that the Appellant was barred *personali Exceptione* from availing herself of the Proof she had brought ; for although the Respondent, by her said Answer, did admit that the Proof, which the Appellant had brought, would be a sufficient Proof of a Marriage in any other Case, yet she insisted it must not be so in the present Case, on Account of a pretended personal Objection.

To this Answer the Appellant put in a Reply, fully stating her Proof, and insisting that this pretended personal Objection was overruled by your Lordship's said Judgment of the 6th *February* 1748, which allowed her a Proof of her Marriage, and, as in Consequence of that Judgment, the Appellant brought a legal and most convincing Proof of an actual Marriage, it must be available in the present Case, as it would in all other Cases.

19th June 1751.

The Lords of Session pronounced the following Interlocutor, viz. “ the Lord Ordinary, after advising with the Lords, and hearing Council upon both sides, refuses the Bill.”

The Appellant being advised, and conceiving herself aggrieved by the said Interlocutors, appealed to your Lordships therefrom ; and the Appellant most humbly hopes your Lordships will see sufficient Cause to reverse the said two Interlocutors, and to order that the said Lords of Session may reassume the Appellant's said Bill of Advocation, and remit the Cause to the Commissaries, with Instructions to revise the same ; and to find that the Appellant hath proved her prior Marriage libelled ; and that the said deceased Captain *John Campbell* of *Carrick*, and the Appellant, were married Persons, Husband and Wife ; and to find conform to the Conclusion of her Libel, for the following

R E A S O N S.

I. That *Marriage* is a *Contract* indissoluble by the Consent of Parties ; and if it is properly proved, no Court of Law can deny such Marriage its legal Effects, and particularly that during the Subsistence of such Marriage, neither Party, Husband nor Wife, can contract a second Marriage, but that such second Marriage must be an absolute Nullity and void ; and that such second Marriage, in whatever Manner contracted, and attended with whatever Circumstances, can be no Objection to the Establishing the prior Marriage ; and that this is the Law of *Scotland* as well as *England*.

II. The Appellant is advised that legal Evidence must be admitted to prove Facts in all Cases ; and if the Appellant's Marriage is proved, so as, *facere fidem Judici*, if she has brought such a Proof as gives an irresistible Conviction of the Truth of the Proposition libelled, that the Appellant was married, every Court must, in such Case, and your Lordship's will in this, find the Marriage proved, nor will any thing that can be said with respect to the subsequent Conduct of the Appellant ; annihilate her Marriage, nor have the Effect to make the Respondent the lawful Wife of Mr. *Campbell*, who was the lawful Husband of the Appellant.

III. The Appellant is advised, and humbly submits, that she has brought a full clear and convincing Proof of an actual Marriage at the Time libelled (not by the Witnesses present, because they and the Minister are dead) but by her Certificate and Letters. Acknowledgments, Declarations, Writs, Facts and Circumstances, both previous and subsequent to the Respondent's Intercourse with the Appellant's Husband, far more convincing to a Judge, and which, in all Courts, are allowed, and afford a stronger Conviction than the Evidence of two Witnesses, as those might be liable to Corruption ; but Facts and Circumstances, which are *adjuncta subjecti*, cannot be devised or contrived by Corruption or Artifice ; and these Facts and Circumstances, when joined with the Certificate, can leave no Room to doubt that the Appellant was married to Mr. *Campbell* in the Abby of *Paisley*, upon the Day of the Date of her Certificate.

OBJECTION. The Respondent is pleased to say, “ That her Marriage with Mr. *Campbell* is established beyond all Possibility of Cavil ;
 “ First, by the Marriage Lines, dated 9th *December* 1725, signed by the Minister, and attested by two Witnesses, both Ser-
 “ vants at the Time to Mr. *Campbell* ; second, by the Renewal of the Marriage Vow, when Mr. *Campbell* and the Re-
 “ spondent, recently after their Marriage, at first irregularly solemnized, submitted to be rebuked by the Parish Minister, in
 “ order to wipe off the Scandal which their irregular Marriage had raised.”

ANSWER. The Appellant has brought a positive and direct Proof of her Marriage on the 3d *July* 1724, long prior to this Intercourse between the Respondent and Mr. *Campbell*. This rendered any Marriage between Mr. *Campbell* and the Respondent, or any other Woman, during the Appellant's Life, absolutely impossible in Law ; and therefore every Proof brought, or that could be brought by the Respondent, of a Marriage with Mr. *Campbell*, at any Period after ; is absolutely ineffectual to prove the Respondent's a lawful Marriage ; it might prove that Mr. *Campbell* was guilty of Polygamy, but it cannot prove the Appellant ceased to be his Wife, or that the Respondent could become his lawful Wife.

But the Appellant apprehends that the Respondent has not brought any Proof at all of a Marriage, nor does she pretend to say where it was solemnized ; for in her Libel she only says, “ that she was married near by the House of her Parents, in the Parish of *Roseneath*,” which is Part of the *Highlands*, and where the *Highland* Language is generally spoke, and where *Archibald* and *William Macintyre* lived, and always went by that Name ; so that if they had been Witnesses to the Respondent's pretended Marriage, and had subscribed her pretended Certificate, they must have done it by the Name of *Archibald* and *William Macintyre*, and not by their new Low Country Name of *Archibald* and *William Wright*. And as to the Farce of the Rebuke before the Kirk Session, it is hard to understand how this Rebuke can constitute a Marriage, or be a Renewal of a Marriage Vow, so as to be equivalent to Marriage. There can be no Instance found in *Scotland*, where a Gentleman and his Lady were rebuked by a Kirk Session for a clandestine or irregular Marriage, Censures of this Kind are always upon another Occasion, and the Object of the present Rebuke was what passed in the Fields, alluded to in the said Letter of the 1st of *March* 1726, which the Appellant could otherwise have fully proved, but the Respondent presented a Petition to the Commissaries, praying that the Appellant might not be allowed to prove this Adventure, or that the Respondent was with Child before her pretended Marriage with Mr. *Campbell* ; upon which Petition the Commissaries pronounced an Interlocutor, whereby the Appellant was barred from proving these Facts.

OBJECTION. The Respondent says, “ that if there had been no other Marriage in Competition, the Appellant has brought a sufficient Proof
 “ of her Marriage, but that the Proof, however available it might be in a common Case cannot apply to the present, where
 “ the Consequence would be the Annuling of another Marriage ; that the *Exceptio Doli* bars the Appellant from her Decla-
 “ rator, and that nothing less than a Proof of an actual Marriage will suffice in this Case ; as the Appellant was silent all Mr.
 “ *Campbell's* Life-time, she ought not now after his Death avail herself of her Marriage, or any Proof she has made of it.”

ANSWER. The Appellant is advised the Law makes no Difference in a Proof of a Marriage against the Husband, and where there is a Competition, but that a Proof of a Marriage that shall be good against the Husband, shall be good against all the World ; and the Appellant is advised that she has brought a convincing Proof of an actual Marriage, both from the Certificate and Mr. *Campbell's* Letters and Acknowledgments, previous to the pretended Marriage of the Respondent, and she has supported the Date of the Certificate in such Manner, as alone it must be a legal Proof of an actual Marriage, he thereby declares he was solemnly and lawfully married to the Appellant.

As to the *Exceptio Doli*, with respect to the Appellant, she cannot be charged as the Author of any Damage that accrued to the Respondent. It is in Proof, that she heard of Mr. *Campbell's* Courtship of the Appellant in Summer 1724, and of their Marriage ; and if in these Circumstances she adventured upon cohabiting with him, and seducing him into that Cohabitation, as he averred was the Case, and as the Appellant believes the Case really was, she must blame herself, and in this Question the *Exceptio Doli* would come more properly from the Appellant than the Respondent.

Had the Appellant known of any Publication of Banns between her own Husband and the Respondent, without interposing to prevent the Marriage ; had she given a false Answer to any previous Enquiry by the Respondent, she would have deserved Blame ; but the Respondent never made any Enquiry, though she had heard of the Appellant's Marriage. She don't allege a public or regular Marriage, she has given no Proof of the actual Celebration of any clandestine Marriage ; and therefore upon the Evidence it is most probable, that there never was any Marriage, but the Name assumed to cover what is mentioned in the Letter of the First of *March* 1726.

And

And as to the Appellant's Conduct in general, the Occasion of the Secrefy, before Mr. *Campbell's* unfortunate Affair with the Respondent, has been explained; and it appears by his Letter to the Appellant, 4th *November* 1725, that he then gave her hopes he would publish their Marriage immediately; and when the Appellant was afterwards informed of his Misfortune by his Letter of 1st *March* 1726, she was at a Loss how to conduct herself, her Regard to herself moved her strongly to divulge her Marriage, which, if she had done, she could not have failed of Success; but on the other hand even her own Ruin, and in some Measure the more certain Ruin of her Husband, was apprehended; her Fear for his Life, which he impressed her strongly with, and the Strength of his Influence over her made her at length resolve to submit in most disagreeable Circumstances, hoping that, in a little Time, Providence would raise her Husband to a State of Independence; but his Affairs grew worse and worse, her past Silence came to be an additional Reason for continuing silent, from Time to Time, till the Event fell out, when she was obliged to do it in her own Justification, or bear a Reproach inconsistent with a Wife, and with those Declarations which her Husband and she made to many of their Friends, in his Life-time, of their Marriage; and she was the rather induced to acquiesce from a Conviction of the Truth of what Mr. *Campbell* always assured her, that there never was any actual Marriage of any Sort with the Respondent, which the Respondent herself cou'd not but know.

For these (and other Reasons to be offered at Hearing) the Appellant humbly hopes the Interlocutors complained of will be reversed, &c.

W. MURRAY.
G. HAY.

*Magdalen Cochran, otherwise
Campbell, Widow and Admi-
nistratrix of Captain John
Campbell, of Carrick, deceased,* } Appellant.

Mrs. Jean Campbell, - - Respondent.

The Appellant's CASE.

*To be Heard at the Bar of the House of Lords,
on Friday the 6th Day of March, 1752.*

